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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/682,048

07/13/2001

Walter L. Peck

peck

2678

26496 7590 03/07/2007
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EXAMINER

HAYES, BRET C

ART UNIT

PAPER NUMBER

3641

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

03/07/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/682,048

Applicant(s)

PECK, WALTER L.

Examiner

Bret Hayes

Art Unit

3641

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 13-15 is/are rejected.
- 7) ☒ Claim(s) 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 & 13 – 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kunzman in view of Hillestad (both previously cited).

3. Re – claims 1 & 15, Kunzman discloses the invention substantially as claimed including a plant stand comprising: at least two rings 1 with similar diameters to one another; and at least three vertical supports 3, configured to slide around the circumference of said at least two rings without being disengaged from said at least two rings; and said at least two rings configured to slide inside said at least three vertical supports, as in the rings are enclosed within the vertical stands, and thus, ‘slide inside at least three vertical supports’. However, Kunzman fails to disclose: 1) at least four rings; 2) the rings being of different diameters from one another; and, 3) arranged in descending diameter of said at least four rings from a top of said at least three vertical supports to a bottom of said at least three vertical supports.

1. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize two more rings, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St, Regis Paper Co. v. Bemis Co.*, 193 USPQ 8. In this case, the duplication of the at least two rings would not alter the function of the device itself.

2 & 3. Hillestad teaches rings 15 – 17 being of different diameters from one another and arranged in descending diameter of the rings from a top of at least three vertical supports 11 – 13 to a bottom of the at least three vertical supports in the same field of endeavor for the purpose of more successfully raising tomato plants. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Kunzman to include the teaching of Hillestad to incorporate the rings of different diameter and to arrange the rings from largest to smallest in a descending order from top to bottom in order to more successfully raise tomato plants. Motivation to alter Kunzman would be the discovery that tomato plants are more likely to mature in a healthier state when allowed such a structure on which to grow.

4. Re – claim 13, Kunzman in view of Hillestad discloses the claimed invention as applied above. Kunzman further discloses the rings being permanently attached to the supports.

5. Re – claim 14, Kunzman in view of Hillestad discloses the claimed invention as applied above. Kunzman further discloses wherein the at least three vertical supports are slidably engaged on the rings, and when the three vertical supports are touching one another, the stand collapses to be stored in a flat position, FIG. 2, for example.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Allowable Subject Matter

7. Claim 16 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3641

Conclusion

Any inquiry concerning this communication should be directed to Bret Hayes at telephone number (571) 272 – 6902 or email address bret.hayes@uspto.gov. The examiner can normally be reached Monday through Friday from 5:30 am to 2:00 pm, Eastern Standard Time.

The Central FAX Number is **571-273-8300**.

If attempts to contact the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached at (571) 272 – 6873.

A handwritten signature in black ink, appearing to be "Bret Hayes", with a large, stylized loop at the end.

Bret Hayes

5-Mar-07